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**Transmitted via E-mail**

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MINNESOTA BULLETIN NO. 330-5-1

SUBJECT: MGT – 2005 FOOD SECURITY ACT COMPLIANCE REVIEWS

**ACTION DUE BY: VARIOUS DATES AS LISTED WITHIN**

Purpose: To provide information and instructions on the 2005 Food Security Act compliance review process and reporting requirements.

Expiration Date: December 1, 2005

**All staff conducting compliance reviews need to be familiar with Part 518 of the NFSAM, Fourth Edition, available on the web on the NRCS On-Line Directives Management System, [http://policy.nrcs.usda.gov/scripts/lpsiis.dll/M/M\\_180.htm](http://policy.nrcs.usda.gov/scripts/lpsiis.dll/M/M_180.htm).**

**Compliance Review Procedure for 2005**

The 2005 compliance review process will be very similar to that used last year. Once again we will be using a national web-based application to report compliance reviews. This application is available via My.NRCS under the accountability tab. Look under the Integrated Accountability section, click on the tab labeled "FSA Compliance Reviews", and then choose the "data entry" tab.

From this site location select Minnesota and your county, to view the list of tracts that have been selected for a 2005 compliance review. The current total number of reviews for the entire state stands at 772 tracts. The user manual for this application can be found under the "online Help" tab. This manual has all the information concerning data entry for this application. This process also requires that producers undergoing a review be identified in SCIMS and that tracts selected for review be geo-referenced. Assistance State Conservationists (FO) are responsible to insure that their field staffs have been adequately trained on the use of the compliance review reporting software.

Field staff will verify the tracts listed for 2005 FSA Compliance Reviews. Any tracts granted a variance in a prior year need to be included in this year's review list. Variance tracts not added by the national office will be added at the field office. Field offices will not modify compliance review lists, including changing or eliminating tracts, without approval of the Area Office Quality Control Officer.

Listed below are the significant changes that have been made to the application since last year including:

#### TRACT WORKLIST:

Found under the reports section, “the tract worklist” will provide locational information on each tract, including whether they are located in a different administrative county. Another category, called “Replacement Tract”, has been added that will be automatically generated when a tract is not valid or not found.

#### DATA ENTRY:

Part A, Tract Information: No changes this year. Future modifications will allow the field office to change the administration or location county, tract category, or tract number.

Part B: This will be populated with a name or names found in SCIMS. You can accept a name by checking the verified box or delete the names and find the correct producer. This should help find the review tract in office records.

Part C: No Change

Part D, Tract Validity: Updates have been made to the questions for “not a valid tract” or “tract not found”. The system will now ask for a replacement tract or the new tract number from a reconstitution. When the revised tract number is entered and saved it will be marked "Replaced" status and the revised tract will appear in your worklist.

Part E, Tract Wetlands Review: Updates have been made to the wording and they have removed the question asking about certified wetlands.

Part F, Highly Erodable Land (HEL) Compliance Determination: Added clarification questions about HEL land erosion.

Part G, Review Summary: Added a question about contracts and provides a link to Protracts to verify contracts if needed.

#### TOOLS MENU:

The tools menu has been activated to allow a user who cannot see the tracts for their county to change their profile to the correct location county. Just click on My Profile and see the counties the user is assigned.

#### REPORTS:

There will be additional reports added. They are looking at ways to provide a standard notification letter to be sent to producers about the pending compliance review.

Timing for completion of the in-field portion of compliance reviews needs to correspond to the date appropriate for evaluating the practices in the HEL plan. Data entry into the website should be done as soon as possible within workload constraints, but must be completed no later than

**October 14, 2005.** Each ASTC (FO) will provide quality control to verify that all of their Area's compliance reviews and the data entry have been completed by **November 1, 2005.**

### **Add-On Tracts**

The system has mechanisms for creating new tracts or changing tract numbers when a tract is reconstituted. All tracts on the national list, or the land they represent, must undergo a compliance review. There are no exceptions to this requirement. The compliance data base should already include those tracts that require a mandatory review in 2005 due to a finding of less than full compliance in 2004. Each DC will verify the added on tracts with the results of their 2004 compliance reviews. Unless already done by the national office, all tracts found to be in non-compliance or given a variance in 2004 will be added to the 2005 list.

The following tracts will be added to the county compliance review list:

1. Each HEL tract(s) owned or operated by NRCS employees (Code U) are to be reviewed at least once every three years. NRCS employees are required to disclose their interest in farmland on form NRCS-CPA-1. Employees who have acquired land or interest in land within the past year and not reported this to the state office shall request and complete this form in 2005. The State Office maintains a complete listing of all employee owned land and those employees subject to reviews based on past employee submittal of this form.
2. Tracts owned or operated by other state, federal or local government employees and officials involved in the implementation of HEL and/or wetland compliance (Code U). These tracts can be reviewed once every three years, only if requested by that agency.
3. Tracts of persons requesting reinstatement. These are tracts found to be "NA" in a prior year and must receive a compliance review during the crop year reinstatement is requested. (Code A).
4. Tracts on which NRCS receives whistle blower complaints, tracts which we observe as possibly in non-compliance, tracts referred by another USDA agency or other additions (Code A). This includes tracts requested by FSA on Form 569 dealing with potential wetland, sodbuster and compliance plan violations.
5. FSA-Farm Credit rules require that 5% of their borrowers who farm HEL cropland receive compliance reviews. If requested, borrower tracts (code A) will be added to this year's compliance review list following the same procedure that was used last year. Each District Conservationist will meet with FSA and share a copy of the compliance review list indicating both tract numbers and operator names. It is the FSA's responsibility to select tract numbers and request compliance reviews to obtain a 5% sample of their borrowers. When it is necessary to add borrowers to the list, only one tract per borrower needs to be reviewed. It is FSA's responsibility to know which of their borrowers crop HEL and to provide any additional tracts, if needed. See N FSAM, Part 518.02C, page 518.A.02-1, Fourth Ed., March 2003.

After all additions have been made, the person assigned to do the reviews will review the list and identify any tracts that may represent a personal conflict or potential conflict of interest. Personal conflict would include tracts owned or operated by family members, personal fields, SWCD

supervisors, or others that might interfere with an impartial review. When tracts where personal conflicts are identified, contact the Area Office for assistance in completing these reviews.

**Exemptions from Compliance Reviews (for HEL Components Only) (NFSAM Part 518.04)**

Tracts that meet any of the following conditions are exempt from the compliance review process:

- The tract has been reviewed at least once in the past two years and found to be “AA” or “UA”
- The participant’s plan documents a fully applied RMS level system
- Where crop residue management or use is the only practice in the conservation system for a specific field within the tract **AND** the USDA participant has either self-certified or provided by a technical service provider certification that the residue levels meet the requirements of the conservation system as specified in the FOTG. Self-certification records shall become a part of the compliance review record in that person’s case file.

If an entire tract meets the criteria for exemption from the HEL portion of the compliance review, then use code “EX” to show that no compliance determination was made on this tract. If only a field is exempted, then fully document the field exemption in the remarks section of the software, and code the tract with the appropriate compliance review code based on the remainder of the field review.

**In-field tract verification for wetland provisions are not exempted through this process. All compliance review tracts will be reviewed for potential wetland violations. The compliance review information for review of potential WC violations shall be completed and appropriately coded.**

**Partial Review of a Tract (NFSAM Part 518.04 d, page 518.A.04-1)**

Compliance reviews may be limited to a partial review of the tract if the following criteria apply:

- A compliance review is being conducted as a result of a variance being granted in the prior crop year. The compliance review may be limited to the field or practice for which the variance was granted. If conditions warrant, the DC may elect to review the entire tract.
- A variance was granted due to a disaster do not have to be included on the following year’s compliance review list unless other conditions for a specific tract prevail.

**Scheduling Compliance Reviews (NFSAM Part 518.01 c and d; page 518.A.01-1)**

An appointment will be made with the person responsible for applying the plan on the tract being reviewed. NRCS will schedule reviews to encourage the producer’s participation when possible. Producers are to be given at least 15 days notice but not more than 30 days notice prior to conducting the compliance review. The compliance review process is considered started once the producer notification letter is mailed.

Compliance reviews are to be conducted in a timely manner to provide the best opportunity for evaluating whether the scheduled practice(s) in the plan have been applied. Plans requiring crop residue management must be evaluated as soon as practical after planting.

### **Conservation System Revision (NFSAM Part 518.01 g; page 518.A.01-2)**

NRCS will not provide technical assistance for conservation planning or conservation system modifications or revision until after the compliance review has been completed, unless the following situations apply:

- Planned structural conservation practices are scheduled to be installed during the same crop year as the review, but after the review has taken place
- Existing structural conservation practices are in need of maintenance
- The compliance review is completed when on-site field work has been performed.
- A conservation system is being applied that meets the FOTG requirements, but has not been officially documented in the USDA participant's case file.

### **Conducting Compliance Reviews**

All of the procedures in **NFSAM Part 518, Subpart B – Conducting Compliance Reviews** will be followed.

The compliance review consists of an on-site comparison of the actual application of conservation practices and treatments against those in the approved conservation plan or the appropriate plan level. The reviewer should utilize any available records, including records supplied by the producer, contractors, crop consultants, FSA, and prior NRCS technical assistance notes during the compliance review process. Where the actual conservation system being used is different than the planned system, the review should be based on the system in place. In potential HEL violation cases, the reviewer's determination will be based on whether an approved conservation system is being or has been applied on the land.

Review the entire tract for potential wetland violations. The process will include a comprehensive evaluation that a wetland violation has not occurred on the entire tract.

### **Evaluation Tools**

As was done last year, HEL compliance will be determined using RUSLE-2 soil loss technology. Where existing soil loss calculations have been made using models other than RUSLE-2 additional calculations will be necessary.

Over the course of the last several years, many farmers have been removing or reducing the amount of forage crops in their crop rotations. Crop rotation changes are an allowable modification of HEL plans if the revised plan or system meets the ACS soil loss level (as described above) and ephemeral erosion is controlled. Controlling ephemeral gully erosion is a requirement of HEL compliance. Tracts where “**first time**” identified ephemeral erosion control measures are determined to be needed can be found “CA” and the HEL plan revised to add the necessary practices.

When using (WEQ) for evaluating conservation system planning and implementation on HEL fields due to wind erosion, the following guidelines shall be followed:

- If the conservation system was planned using the Critical Period Method of WEQ, then the conservation system implementation shall be evaluated using the Critical Period Method.

- If the conservation system was planned using the Management Period Method of WEQ, then the implementation shall be evaluated using the Management Period Method. **Do not mix the use of the two WEQ calculation methods.**

### **Compliance Review Documentation**

All of the information about the tract and the compliance review will be completed on the Tract Review Form, which is a part of the on-line application. All reviews must contain sufficient documentation to fully support the determination for each field on the tract. Field staff will also use conservation compliance plans, conservation assistance notes, and other inventory forms as noted below to fully document their compliance review findings.

- Any producer that is fully applying their conservation system, as described in their compliance plan, or has a fully applied system which meets or exceeds the conservation required in their approved plan shall be determined “UA”. For “UA” determinations, document that all planned practices are applied and being maintained for the 2004 crop year. This would include showing all scheduled practices as applied in the conservation plan and a comment in the “Comments” box stating that “all scheduled practices are fully applied and being properly maintained according to the conservation plan.” Annual practices with threshold levels, such as residue management, will require documentation to show that they are adequately applied this year. For residue management, residue measurements will be documented according to policy.
- For all other determinations where the conservation plan is not fully applied ( “AA”, “CA”, “AC”, “AE”, “AG”, “AH”, “AM”, “CA”) document the scheduled and applied practices as indicated for the “UA” determination (above) AND document:
  1. planned erosion rate
  2. current erosion rate
  3. ACS erosion rate
  4. Why the fields are not “UA”
- When a potential “NA” determination is suspected, make the producer aware of the situation. The producer should be given the opportunity to view the findings on-site with the reviewer. Field offices will contact the Area office for guidance on all “NA” determinations including granting variances and landowner appeal rights.
- Any field subject to sodbusting must have the “T” value documented to indicate the soil loss criteria to be achieved.
- N/HEL determinations will be field verified, including previously determined NHEL fields, where the original determination was completed in the office and the determination hinges on non-field documented PHEL soils.

- Instructions for documenting the wetlands review on the tract are in the attached user manual. Compliance with wetland provisions can be documented by using on-site, offsite or both procedures but will always include a complete aerial slide/imagery review. For all tracts with wetlands (including tracts without determinations or with non-inventoried areas) determine and document wetland compliance. The evaluation will include either a review of the current year imagery / photography or an in-field visit. On tracts without wetlands (entire tract labeled “NW” or “PC” or “NW/PC”) and without non-inventoried areas, this slide or in-field review is not required. Use the comments box in the software to make any necessary explanations.

The compliance review process is about making and documenting decisions. An integral element of the process is to insure that correct determinations are being consistently made. Adequate supporting documentation of compliance reviews must be done to achieve this goal. Enough documentation should be present to prove what led the reviewer to make the determination. Documentation is most critical on those determinations found to be “NA” or where a variance is being granted. All producers will be notified in writing of the compliance review results.

Direct questions on the information contained in this bulletin through your Area Office to Paul Flynn, State Resource Conservationist.

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